

***ALL NAVIGABLE RIVERBED RENTS AND INCOME FROM OTHER USES DIRECTED  
TO THE COMMON SCHOOLS BENEFICIARIES GUARANTEED ACCOUNT FOR  
THE YEARS 2008 THROUGH 2011***

On March 30, 2010, the Montana Supreme Court affirmed the First Judicial District Court's determination that navigable riverbeds in the State of Montana are held in trust under the Montana Constitution as part of the public land trust, Article X, Section 11, in PPL Montana, LLC v. State of Montana, 2010 MT 64. The Court further determined that use of lands that are part of the public land trust for power generation subjected PPL to the payment of rents under the Hydroelectric Resources Act, M.C.A. §77-4-201. The 2009 Montana Legislature enacted legislation directing 95% of the revenues from the lease rentals for these riverbeds to be placed in the school facility and technology account provided for in M.C.A. §20-9-516, with 5% of the revenues deposited annually in the public school permanent fund provided for in M.C.A. §20-9-621. However, the legislature did not address interim rents from 2008 through 2011 from leases and other uses of the navigable riverbeds. With the distribution of rents and other income for the years 2008 through 2011 left to the general authority of the Board of Land Commissioners under M.C.A. §77-1-202(1) to provide for the support of education, the Department asks for the Board's direction for proper disbursement of the rents.

In the past, revenue produced from riverbed leases has been directed to the common schools for annual distribution in the guarantee account, with other license and easement uses directed to the general fund. The court's ruling that all such navigable riverbeds are part of the public land trust under Article X, Section 11, means that the Board has a fiduciary duty to manage these assets for the support of education under M.C.A. §77-1-202(1). Pursuant to this duty, the Board must determine the appropriate distribution of rental and other income for the years 2008 through 2011.

Therefore, the Department recommends that the Board approve the following disposition of revenue:

**The disposition of all rents and other income from the use of the navigable riverbeds during in 2008 through 2011 must be deposited consistent with Article X, Section 5 of the Montana Constitution in the guarantee account for current distribution to common schools under M.C.A. §20-9-341 and M.C.A. §20-9-342 M.C.A. Proceeds from all permanent interests in riverbeds lands, including from easements and royalties, must continue to be deposited in the Public School Fund under M.C.A. §20-9-601 M.C.A. After January 1, 2012, the legislature has directed that all riverbed rents from hydroelectric resource leases will be deposited into the school facilities fund consistent with M.C.A. §20-9-516; however all other rents and other income will continue to be deposited into the guarantee account.**